

**DEPARTMENT OF HEALTH CARE FINANCE &
DEPARTMENT ON DISABILITY SERVICES**

**PUBLIC NOTICE OF PROPOSED AMENDMENTS AND
PROPOSED TRANSITION PLAN**

**Home and Community-Based Services Waiver for
Persons with Intellectual and Developmental Disabilities**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02) (2012 Repl. & 2013 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), and the Director of the Department on Disability Services (DDS), pursuant to authority set forth in Title I of the Department on Disability Services Establishment Act of 2006, effective March 14, 2007 (D.C. Law 16-264; D.C. Official Code § 7-761.01 *et seq.*), hereby give notice of their intent to submit a transition plan for and amendments to the District of Columbia Medicaid program's Home and Community-Based Services (HCBS) Waiver for Persons with Intellectual and Developmental Disabilities (IDD) to the Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS) for review and approval.

CMS regulations, effective March 17, 2014, and published in 79 Fed. Reg. 2948-3039 (Jan. 16, 2014), changed the definition of home and community-based services settings for HCBS Waiver services. Additionally, the new CMS regulations require that, at the time HCBS Waiver amendments are submitted, DHCF and DDS must develop and submit to CMS a transition plan identifying how the HCBS Waiver will be brought into compliance with the new outcome-oriented definition of HCBS settings; provide a thirty (30) day public notice and comment period; and provide at least one additional opportunity for public comment.

The proposed amendments to the HCBS Waiver contain changes to the methods and standards for setting payment rates for some services and substantive changes to the amount, duration, and scope of some services. DHCF and DDS previously published a public notice in the D.C. Register, *see* 61 DCR 2330-2333 (Mar. 14, 2014), of a series of proposed changes in rate methodologies and reimbursements, substantive changes for some services, and a proposed transition plan. Based upon comments from the public and CMS, DHCF and DDS have revised the proposed transition plan and are making additional changes to the proposed HCBS waiver amendments.

On October 31, 2014, DHCF and DDS published public notice of proposed changes to the rate methodologies and reimbursements in the D.C. Register at 61 DCR 11597. DDS is proposing additional changes and has made some corrections to the prior public notice as explained more fully in this public notice below.

The following proposed changes in rate methodologies and reimbursements, to be effective upon approval by CMS and publication of implementing regulations, were initially published on March 14, 2014, and are republished without substantive changes (and there are no changes from the October 31, 2014 publication):

- 1) The Residential Habilitation and Supported Living services rate methodologies to be modified to match the overtime, paid time-off correction implemented in the Intermediate Care Facility for Individuals with Intellectual Disabilities rate methodology implemented in FY 2014.
- 2) The Day Habilitation services rate methodology to be changed to include nursing for staff training and oversight of Health Care Management Plans (HCMPs) at a ratio of 1:20 to be paid at the rate for a Registered Nurse of \$72,800. This change is to improve the health and welfare of Waiver beneficiaries who have complex health support needs.
- 3) Host Home services rate to include a vacancy factor of 93% (1.07) to promote parity with all other residential services which also have a vacancy factor.
- 4) Employment Readiness, Day Habilitation, Supported Employment (all), Group Supported Employment, and Family Training services' Direct Support wage rates to be increased by the market basket rate for nursing homes for FY 2015 of 1.3%. The rates for these services have not changed in six (6) years.
- 5) Clinical therapy rate research to address the on-going problem with access to a qualified and adequate provider network in Physical Therapy (PT), Occupational Therapy (OT), Speech, Nutrition and Behavioral Support services, a rate review of other provider networks operating in the District was completed. Two primary competitors for clinicians are working in the schools and early intervention. The Office of the State Superintendent for Education's (OSSE) published rates under 5 DCMR § A-2853 pay \$98.90 per hour for PT, \$100.90 for Speech and \$105.57 for OT. Health Services for Children with Special Needs reports PT and OT at \$125 per hour, and Speech Therapy sessions at \$71.18. Master's prepared counselors through OSSE, the Department of Behavioral Health and the Children and Family Services Agency are paid at \$65.00. Based on the above the following rates are proposed: increase Behavior Paraprofessional

from \$60.00 to \$65.00 per hour; increase OT, PT and Speech from \$65.00 to \$100.00 per hour; and, Nutrition from \$55.00 to \$60.00 per hour.

- 6) Art Therapies: Based on the comments from providers and market research, to increase Art Therapy to \$75 per hour, and to introduce a group rate of \$22 per hour for a group of up to four.
- 7) Fitness: Based on current market conditions, to reduce the rate from \$75 to \$50 per hour, and to introduce a group rate of \$30 per hour for a group of two.
- 8) Individualized Day Supports rate to be reduced from \$24.44 per hour to \$21.79 per hour, based on market research and to promote parity with other individualized supports.
- 9) Upon approval of the IDD HCBS waiver by CMS, DHCF and DDS intend to increase all rates in subsequent years based on requirements of the D.C. Living Wage Act of 2006 and the market basket index for nursing homes to keep pace with inflation using appropriate Medicaid long-term care services indicators.

DHCF and DDS propose the following additional changes in rate methodologies and reimbursements to be effective upon approval by CMS and publication of implementing regulations:

- 1) Residential Habilitation, Supported Living, In-Home Supports, Host Home, and Behavioral Support Non-Professional to include increases in the hourly wage rates for the Direct Support Professionals (DSPs), and associated percentage rate increases for the House Manager and Qualified Intellectual Disabilities Professionals and Registered Nurse to be in compliance with the D.C. Living Wage Act of 2006 for FY 2015.
- 2) Day Habilitation: Modify rate to reflect increased costs associated with benefits for staff, facilities and utilities, including cell phones; and decreased costs associated with DSP hours, specifically that the rate should be based upon DSPs working 2080 hours per year. The new proposed rate is \$6.68 per 15 minute unit and the rate for Day Habilitation 1:1 is proposed at \$11.78 per 15 minute unit. Introduce a small group rate with a staffing ratio of 1:3 and no more than 15 people in a setting for people with higher intensity support needs at \$10.20 per 15 minute unit. Add a new rate modifier for Day Habilitation that includes payment for meals for waiver recipients who live independently or with their families.
- 3) Employment Readiness: Increase in the Employment Readiness rate from \$3.80 to \$4.26 per 15 minute unit based upon increased costs in capital and indirect costs.

- 4) Personal Care: An increase in the personal care rate to coincide with the State Plan personal care service rate to \$4.65 per 15 minute unit.
- 5) Supported Living with transportation and Residential Habilitation: Added a staff cost component to the transportation cost center equal to one (1) DSP eight hours a day for 249 days per year.
- 6) Supported Living: A decrease in the Supported Living without transportation rates due to a reduction in the number of hours to be reimbursed during what is commonly considered the hours spent in day or vocational services in the direct service cost center.
- 7) Residential Habilitation: A decrease in the Residential Habilitation rates due to a reduction in the number of hours to be reimbursed during what is commonly considered the hours spent in day or vocational services in the direct service cost center.
- 8) Individualized Day Supports: Introduce a one-to-one rate of \$9.23 per 15 minute unit. Add a new rate modifier that includes payment for meals for waiver recipients who live independently or with their families.
- 9) Companion Service: Add a Companion Service at the proposed rate of \$4.59 per 15 minute unit for general supervision.

The following substantive changes to services proposed to be effective upon approval by CMS and publication of implementing regulations were initially published on March 14, 2014, and are republished without substantive changes (and there are no changes from the October 31, 2014 publication).

- 1) Behavioral Supports: Modify to a tiered service, utilizing low intensity behavioral supports, moderate behavioral supports, and high intensity behavioral supports, with corresponding caps on level of service, based on the person's assessed needs.
- 2) Day Habilitation: Add a nursing component to the service definition for the purpose of medication administration, and staff training and monitoring of the participants' HCMPs.
- 3) Individualized Day: Modify requirements for DSP qualifications. Allow relatives to provide DSP services for the person.
- 4) Transportation Community Access: This service is not utilized and will be omitted because transportation is available through the Medicaid transportation provider.

- 5) Shared Living: This service is not utilized and will be omitted. In the future, it will be an available service under the Individual and Family Supports Home and Community-Based Services waiver that is in development.
- 6) Skilled Nursing: Skilled nursing services will no longer be prohibited in a Supported Living setting.
- 7) Supported Employment: Amend provider qualifications by requiring that all Supported Employment providers become Rehabilitation Services Administration service providers within one year of approval of these amendments.
- 8) Supported Living: Add specialized rate authority when needed to provide intensive individualized staffing to support a person due to complex behaviors that may involve a serious risk to the health safety or wellbeing of the person or others, or when required by court order.
- 9) Supported Living: Modify service to allow skilled nursing to be provided in this setting.
- 10) Wellness: Modify requirements for fitness trainers to include people who have obtained a bachelor's level degree in physical education, health education or exercise science. Modify provider qualifications for bereavement counselors to ensure access to a larger group of qualified providers.
- 11) DHCF shall use spousal impoverishment rules to determine eligibility for the home and community-based waiver group, whereby a certain amount of the couples' combined income and assets are protected for the spouse not receiving services under the HCBS waiver, to be effective in IDD HCBS Waiver Year 2, or upon approval by CMS.

DHCF and DDS propose the following additional substantive changes in services to be effective upon approval by CMS and publication of implementing regulations:

- 1) Waiver Years 4 and 5 Increase in Participants: Increase the unduplicated number of participants in Waiver Years 4 and 5 from 1,692 to 1,742.
- 2) Art Therapies: Change the name of Art Therapies to Creative Art Therapies.
- 3) Behavioral Supports: Add clarifying language that a Licensed Graduate Social Worker may only deliver services in accordance with Section 3413 of Chapter 34 of Title 22 of the D.C. Municipal Regulations.

- 4) Companion: Add a new service to provide non-medical assistance or supervision in accordance with a person's assessed needs and plan of care.
- 5) Day Habilitation: Add small group day habilitation for people who are medically or behaviorally complex, and which must be provided separate and apart from any large day habilitation facility. Add provision of one nutritionally adequate meal per day for people who live independently or with their families. Clarify service definition for day habilitation to require meaningful adult activities and skills acquisition that support community integration and a person's independence.
- 6) In Home Supports: Modify to require the owner and operator of the provider agency to have a degree in the Social Service or related field with at least 3 years of experience working with people with IDD, or five years of experience working with people with IDD.
- 7) Wellness: Add small group fitness at 1:2 ratio, which allows a person to work out with a friend. Add recreational therapists and people with a B.A. in Kinesiology to the list of qualified providers for fitness services.
- 8) Individualized Day: Modify Individualized Day Supports (IDS) service definition to clarify that IDS includes the provision of opportunities that promote community socialization and involvement in activities, and the building and strengthening of relationships with others in the local community. Allow IDS to be combined with other day and employment supports for a total of forty (40) hours per week. Offer IDS in small groups (1:2) and one-to-one, based upon the person's assessed need and, for limited times, based on ability to match the person with an appropriate peer to participate with for small group IDS. Add orientation requirements for DSP staff working in IDS. Limit minimum service authorizations. Add provision of one nutritionally adequate meal per day for people who live independently or with their families.
- 9) Supported Living and Supported Living with Transportation: Modify service definition to create more flexibility in the application of the reimbursed staffing hours and ratios, to better reflect the time individual persons may spend in their residence during the course of the day to be responsive to individualized person-centered plans.
- 10) Provider Requirements: Add requirement that owner-operators of the following services complete training in Person-Centered Thinking, Supported Decision-Making, Supporting Community Integration, and any other topics determined by DDS, and in accordance with DDS published guidance within one year from the date the waiver application becomes effective for current providers and prior to any new waiver provider becoming approved

to initiate services: Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In Home Supports, Day Habilitation, Individualized Day Supports, Employment Readiness, and Supported Employment.

Copies of the proposed amendments to the HCBS waiver and the proposed transition plan may be obtained on the DDS website at <http://dds.dc.gov> or upon request from Laura L. Nuss, Director, D.C. Department on Disability Services, 1125 Fifteenth Street, N.W., 4th Floor, Washington, D.C. 20005.

There are two opportunities to provide comments on the proposed HCBS waiver amendments and the proposed transition plan:

Written comments on the proposed waiver amendments and proposed transition plan shall be submitted to Laura L. Nuss, Director, D.C. Department on Disability Services, 1125 Fifteenth Street, N.W., 4th Floor, Washington, D.C. 20005, or via e-mail at dds.publiccomments@dc.gov, during the thirty (30) day public comment period, starting from the date this notice is published.

DHCF and DDS will hold a public forum during which written and oral comments on the proposed amendments and transition plan will be accepted. The public forum will be held at the D.C. Department on Disability Services, 1125 Fifteenth Street, N.W., Washington, D.C. 20015 on Monday, December 1, 2014, at 4 pm. Prior to this public forum, at 3 pm, DDS will host a training session on the HCBS Settings Rule.

Copies of this notice also will be published on the DDS website at <http://dds.dc.gov> and on the DHCF website at <http://dhcf.dc.gov>.

For further information, contact Erin Leveton, Program Manager, DDS State Office of Disability Administration, at (202) 730-1754, erin.leveton@dc.gov.